

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

TRAVIS ENGELBART,

Plaintiff,

vs.

KILOLO KIJAKAZI, Acting  
Commissioner of the Social Security  
Administration,<sup>1</sup>

Defendant.

8:20-CV-327

MEMORANDUM AND ORDER

This matter is before the Court upon the plaintiff's Motion for Award of Attorney Fees pursuant to the Equal Access to Justice Act, [28 U.S.C. § 2412\(d\)](#). [Filing 25](#). The defendant does not object to the plaintiff's requested fees and expenses in the amount of \$2,951.64 ([filing 25-2](#)); which represents .5 hours of work in 2020 at a rate of \$207.78 per hour and 10.5 hours of work in 2021 at a rate of \$212.86 per hour for attorney Wes Kappelman, and .9 hours of work in 2020 at a rate of \$207.78 per hour and 2 hours of work in 2021 at a rate of \$212.86 for attorney Timothy Cuddigan.<sup>2</sup> [Filing 25-2](#); [filing 29](#). The defendant also does not object to the plaintiff's recovery of his filing fee in the amount of \$400.00. [Filing 24](#).

The Court has determined that the plaintiff was the prevailing party in this action, as the Commissioner's decision was reversed and the case

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<sup>1</sup> Kilolo Kijakazi is now the Acting Commissioner of the Social Security Administration and has been substituted as a party pursuant to [Fed. R. Civ. P. 25\(c\)](#). [Filing 28](#).

<sup>2</sup> The maximum hourly fee of \$125 specified in [28 U.S.C. § 2412\(d\)\(1\)\(D\)\(2\)\(A\)](#) was adjusted to account for inflation. See [filing 25-1 at 2-3](#).

remanded to the Commissioner for further proceedings; that the application for fees was filed in a timely fashion;<sup>3</sup> and that the position of the Commissioner was not substantially justified because the administrative law judge made findings that were not supported by substantial evidence. See *Koss v. Sullivan*, 982 F.2d 1226 (8th Cir. 1993). Therefore, the plaintiff is entitled to an award of attorney fees. Further, the plaintiff is entitled to recovery of his filing fee in the amount of \$400.00, to be paid out of the Judgment Fund administered by the Department of Justice.

IT IS ORDERED:

1. The plaintiff's Motion for Award of Attorney Fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) (filing 25) is granted.
2. By separate document, the Court shall enter judgment for the plaintiff and against the defendant providing that the plaintiff is awarded attorney fees of \$2,951.64, and costs of \$400.00, for a total of \$3,351.64.

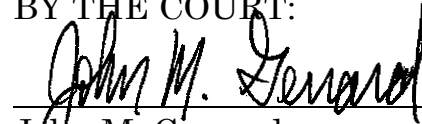
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<sup>3</sup> An Equal Access to Justice Act application based on a district court judgment remanding a case pursuant to sentence four of 42 U.S.C. § 405(g) must be filed no later than 30 days after the sentence four judgment has been entered and the appeal period has run such that the judgment is no longer appealable. See *Pottsmith v. Barnhart*, 306 F.3d 526, 527-28 (8th Cir. 2002); see also *Shalala v. Schaefer*, 509 U.S. 292, 302 (1993); *Melkonyan v. Sullivan*, 501 U.S. 89, 94-97 (1991).

3. That sum shall be sent to plaintiff's counsel, Mr. Kappelman, who shall be responsible for remitting to Mr. Cuddigan his portion of the award.

Dated this 3rd day of August, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "John M. Gerrard", is written over a horizontal line.

John M. Gerrard  
United States District Judge